

# Standard Terms & Conditions for Purchase Order

## 1. Goods and Services

- (a) The Purchaser may, from time to time, issue Purchase Orders to Supplier for the Goods or Services. The issue of a Purchase Order, which incorporates these terms and conditions, creates an agreement between the Parties (a **Contract**).
- (b) The Supplier must provide the Goods or Services to the Purchaser in accordance with the Contract.

## 2. Quality

### 2.1 Conditions as to quality

The Supplier must ensure that the Goods or Services:

- (a) correspond to any sample or description of the Goods or demonstration of the Services provided to the Purchaser.
- (b) are provided in accordance with:
  - (i) the relevant Purchase Order;
  - (ii) any Quality Standards;
  - (iii) all relevant Laws and Policies;
  - (iv) Best Industry Practice; and
  - (v) any direction given by Purchaser or Purchaser's Personnel; and
- (c) when provided, are Fit for the Intended Purpose.

### 2.2 Warranty as to quality

The Supplier warrants that it will provide the Goods and Services:

- (a) with suitably qualified, licensed and experienced personnel;
- (b) in a good and workmanlike manner; and
- (c) using goods, equipment and material of new and merchantable quality.

### 2.3 Inspection

The Purchaser may:

- (a) inspect the Goods at any time before the Goods are delivered; and
- (b) inspect or audit the performance of any or all of the Services or the results of such Services.

### 2.4 Deficient Services or Goods

- (a) If:
  - (i) at any time, the Purchaser identifies that the Services are Deficient Services or;
  - (ii) at any time during the Warranty Period, the Purchaser identifies that the Goods are Defective Goods,

then the Purchaser may in its sole discretion:

- (iii) reject the Deficient Services or Defective Goods (as applicable) in whole or part and direct the Supplier to:

- (A) refund any payments made by Purchaser in respect of any Deficient Services or Defective Goods (as applicable); or
- (B) re-perform or make good, at its cost, any Deficient Services or Defective Goods (as applicable) within a reasonable timeframe; or
- (C) accept the Deficient Services or Defective Goods (as applicable) and require Supplier to reimburse Purchaser for any expenses incurred as a result of the Deficient Services or Defective Goods (as applicable), including a reduction in the Price to reflect the Deficient Services or Defective Goods (as applicable).

- (b) Any Goods repaired or replaced by the Supplier will be subject to the same Warranty Period as the original Goods commencing from the date on which those Goods were delivered to the Purchaser following repair or replacement.

### 2.5 Rights to survive termination

The rights under this clause survive the termination or expiry of the Contract.

## 3. Purchaser Entities

### 3.1 Purchaser Definitions

Each Party to this Agreement acknowledges and agrees that:

- (a) each reference in this Agreement to '**Purchaser Group**' is a reference to Pacific Steel (NZ) Limited (company number: 86021) and each of its Related Companies (each a 'member' of the Purchaser Group), regardless of whether or not they are a party to this Agreement; and
- (b) each reference in this Agreement to '**Purchaser**' is a reference to each or every member of the Purchaser Group, as the context requires, which is a party to this Agreement from time to time (and each reference to a '**Purchaser Entity**' is a reference to any one of them).

### 3.2 Purchaser holds for the benefit of each Indemnified Party

Each Party to this Agreement acknowledges and agrees that each Purchaser Entity holds each exception, limitation, defence, immunity or other benefit contained in this Agreement on behalf of and for the benefit of each Indemnified Party.

## 4. Exclusivity and minimum purchase

### 4.1 Contract is non-exclusive

- (a) Nothing in the Contract imposes an obligation of exclusivity on the Purchaser.
- (b) The Purchaser may engage a third party to provide any combination of goods and services of the same nature as the Goods and Services in addition to or in place of the Supplier at any time and from time to time.

Revision 3	Page 1 of 9	Reference: DIV-LD-01-01.02
Issued October 2018		

**4.2 No minimum volume**

The Purchaser has no obligation to purchase a minimum volume, or any particular volume, of Goods and Services from the Supplier.

**5. Compliance with laws**

Except as expressly provided otherwise, the Supplier must, at its own cost, obtain all Licences required to provide the Goods and Services.

**6. Assignment, novation and subcontracting**

- (a) The Supplier may not assign, novate or subcontract its rights or obligations under the Contract to another party without the prior written consent of the Purchaser.
- (b) The Purchaser may assign, or novate any or all of its rights or obligations under the Contract at any time to any person.
- (c) The subcontracting of a right or obligation does not relieve Supplier from any liability or obligation. Supplier will remain liable to Purchaser for the acts and omissions of any subcontractor as if they were acts or omissions of Supplier.

**7. Delivery**

**7.1 Delivery Term**

The Supplier must deliver the Goods or Services in accordance with the delivery term stated in the Purchase Order. If no delivery term is specified in the Purchase Order, all Goods will be delivered DDP.

**7.2 Supply difficulties**

If the Supplier is, or reasonably believes it will be, unable to provide the Goods or Services by the Date for Delivery, the Supplier must use its best endeavours, at its own cost, to obtain the Goods or Services from an alternative source or provide alternate goods or services by the Date for Delivery.

**7.3 Alternate supply**

- (a) Where the Supplier is unable to procure Goods, Services or acceptable alternative goods or services in accordance with clause 7.2 and the Purchaser procures Goods or Services from an alternative supplier, then the Supplier must, pay the Purchaser the difference between:
  - (i) the actual price of the Goods or Services purchased (including all freight costs); and
  - (ii) the Price that would have been paid for the Goods or Services had the Supplier satisfied its obligations.

**8. Risk and Title**

**8.1 Risk**

The Goods will be at the risk of the Supplier up to Delivery. The Supplier must at its cost make good any damage to the Goods which occurs prior to Delivery.

**8.2 Title**

- (a) Unless expressly provided otherwise, title in the Goods will pass to the Purchaser on and from the earlier to occur of:
  - (i) the date Delivery is achieved; or
  - (ii) payment for the Goods.

- (b) The Purchaser will receive full unencumbered title in the Goods free of any Security Interest.

**9. Performance on Site**

The Supplier must:

- (a) minimise its interference with any of the activities of the Purchaser Group, Purchaser's Personnel or Purchaser's invitees;
- (b) only access the Site in the manner and at the times provided for in the Contract or if none are specified, as directed in writing by the Purchaser;
- (c) take all steps necessary to protect the safety of the Purchaser, the Purchaser's Personnel and any invitees of a member of the Purchaser from risks to safety in connection with the Goods and Services;
- (d) complete such safety or other training or induction as the Purchaser directs from time to time;
- (e) not do anything which may place the Purchaser in breach of any Laws; and
- (f) keep the Site clean and tidy at all times.

**10. Price**

- (a) The Purchaser agrees to pay the Price to the Supplier in accordance with the Contract.
- (b) Unless otherwise stated in the Purchase Order, the Price is inclusive of all costs and Taxes (excluding GST) incurred by the Supplier in supplying the Goods and performing the Services.
- (c) The Price may not be increased without the Purchaser's prior written consent.

**11. Invoicing and payment**

**11.1 Payment Claim**

- (a) On completion of the provision of the Goods or Services (**Completion**), or if the Goods are Delivered or the Services performed from time to time during the Term, at the end of each calendar month, the Supplier must submit a tax invoice to the Purchaser in respect of the Goods or Services provided (**Tax Invoice**). The Supplier shall have up to **6 (six)** months from Completion to submit a Tax Invoice to the Purchaser after which the Supplier will not be entitled to submit the Tax Invoice and the Purchaser will not be under any payment obligation with respect to that Tax Invoice.

**11.2 Payment**

- (a) The Purchaser must pay the Supplier the amount certified as being due for payment in the relevant Tax Invoice within 62 days of the end of the month in which the Tax Invoice was submitted.
- (b) Payment is payment on account only and is not evidence of the value of the Goods or Services, an admission of

Revision 3	Page 2 of 9	Reference: DIV-LD-01-01.02
Issued October 2018		

liability or an admission that the Goods or Services are in accordance with the Contract.

- (c) Except to the extent expressly provided otherwise in this Contract, Supplier is solely responsible for any and all Taxes paid or payable in the supply of the Goods or the performance of the Services and they are deemed to be included in the Price.

**11.3 Set-off**

The Purchaser may deduct from any amount due or to become due to the Supplier, all debts and monies due and payable from the Supplier or its Personnel to any member of the Purchaser Group under or in connection with the Contract or any other agreement between the Parties.

**12. Termination**

**12.1 Breach capable of remedy**

If the Supplier is in breach of the Contract and that breach is capable of remedy, then the Purchaser may issue the Supplier with a Breach Notice.

**12.2 Termination for Breach**

The Purchaser may immediately terminate the Contract by notice to the Supplier:

- (a) if the Supplier is in breach of the Contract and:
  - (i) the Supplier fails to remedy the breach in accordance with the terms of the relevant Breach Notice; or
  - (ii) the breach is not capable of remedy;
- (b) if the Supplier grants a Security Interest, assigns or novates the Contract other than in accordance with the terms of the Contract; or
- (c) on any other grounds specified in the Contract giving rise to a right of termination.

**12.3 Insolvency**

Either Party may terminate the Contract immediately by giving a notice to the other Party if an Insolvency Event occurs in relation to that other Party.

**12.4 Payment on termination**

- (a) Notwithstanding any other provision of this Contract, on termination of the Contract for any reason, the sole liability of the Purchaser to the Supplier will be the payment of amounts payable for Goods Delivered and Services performed up to the date of termination.
- (b) Nothing in the Contract will render the Purchaser liable for any costs relating to redundancy or termination payments of any Supplier Personnel.

**12.5** The Purchaser may, upon giving 30 days prior written notice, terminate the Contract for any reason whatsoever. The Supplier will not be owed any compensation for such termination.

**12.6 Clause survives termination**

This clause survives the termination or expiry of the Contract.

**13. Insurance**

**13.1 Insurances required to be effected by the Supplier**

Supplier must effect and maintain with a reputable insurer at all times during the performance of the Suppliers obligations under the Contract:

- (a) Public and Products Liability Insurance with a limit of liability of at least \$10 million per occurrence (and for products liability insurance, in the aggregate);
- (b) Motor Vehicle Insurance with a limit of liability of at least \$5 million per occurrence; and
- (c) Any other insurances set out in the Purchase order.

**13.2 Evidence of Insurance**

Before commencing the performance of its obligations under the Contract, and at other times requested by the Purchaser, the Supplier must give the Purchaser, in respect of each Insurance Policy, the original or a certified copy of renewal certificates or certificates of currency issued by the insurer in respect of each insurance policy.

**13.3 Contractor's Liability**

Nothing in this clause limits the Contractor's Liability or responsibility under any other provision of this Contract.

**14. Liability & Indemnities**

**14.1 Liability**

- (a) the Supplier is liable for and will indemnify and keep indemnified the Indemnified Parties against any Liability arising out of or in connection with any:
  - (i) breach by the Supplier or its Personnel of this Agreement (including any warranty);
  - (ii) negligent, reckless or wilful act or omission of the Supplier or its Personnel;
  - (iii) act or omission of the Supplier or its Personnel causing property damage;
  - (iv) personal injury, illness or death to any person;
  - (v) breach of Law by the Supplier or its Personnel; and
  - (vi) any Claim regarding the infringement or alleged infringement of Intellectual Property Rights of any person of breach of confidentiality.
- (b) The Supplier's liability will be reduced proportionally to the extent that the Liability is caused or contributed to by the Indemnified Parties.
- (c) Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract.
- (d) It is not necessary for any Indemnified Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

**15. Intellectual Property**

- (a) Except as provided in this clause, nothing in the Contract affects the ownership of a Party's Intellectual Property Rights.

Revision 3	Page 3 of 9	Reference: DIV-LD-01-01.02
Issued October 2018		

- (b) All Intellectual Property Rights (including future Intellectual Property Rights) produced by or on behalf of the Supplier in connection with the Contract, both present and future (**Project IP**) will remain the property of the Supplier.
- (c) The Supplier grants to the Purchaser a perpetual, irrevocable, non-exclusive, worldwide, transferable, royalty-free licence (including the right to sublicense) to use, exercise and exploit all Project IP and to exercise the Intellectual Property Rights in the Supplier Material for any purpose in connection with the business of the Purchaser Group.
- (d) The Purchaser grants the Supplier a non-exclusive, fully paid-up licence, for the Term, to use and reproduce the Purchaser Material for the purpose of providing the Goods and Services.
- (e) The Supplier represents and warrants that the exercise of the Purchaser's rights in respect of the Project IP and Supplier Material will not infringe any person's rights in that material, including any Intellectual Property Rights and moral rights.
- (f) The licences and obligations in this clause survive the termination or expiry of Intellectual Property Rights.

**16. Confidential Information**

- (a) Subject to this clause, and to the extent necessary to perform Supplier's activities, Supplier must ensure that:
  - (i) all Confidential Information is kept confidential; and
  - (ii) its Personnel and its Subcontractors maintain in confidence all Confidential Information.
- (b) If any Subcontractor or employee of Supplier must, incidentally to the performance of any of Supplier's activities, access Purchaser's computer system, Supplier must first procure execution by that person of a deed setting out that person's obligations in respect of confidentiality and compliance with any policies.
- (c) The obligations under this clause survive termination of the Contract.

**17. Anti-Bribery and Corruption**

- (a) The Parties must not offer or provide any benefit (including any payment, gift, hospitality or gratuity, whether monetary or in-kind) to any person with the intention of improperly influencing such person in the exercise of their duties (including to make a decision or to take or refrain from taking other action).
- (b) The Supplier represents, warrants and undertakes that:
  - (i) neither the Supplier nor any of its directors, officers, suppliers, and Personnel have offered, authorised, promised, given, solicited or accepted, and none of the foregoing will offer, authorise, promise, give, solicit or accept, to or from any person, including any government department, agency or instrumentality or any representative thereof, whether directly or indirectly, any payment, gift, service, thing of value or other advantage where such an action would violate any applicable anti-

- corruption or anti-bribery law, including but not limited to the Secret Commissions Act 1910, the Crimes Act 1961, the US Foreign Corrupt Practices Act 1977 and the UK Bribery Act (**Anti-Bribery and Corruption Laws**);
- (ii) the Supplier and its Personnel will comply with Anti-Bribery and Corruption Laws;
- (iii) the Supplier shall maintain in place throughout the term of this Agreement internal controls and policies and procedures to ensure compliance with Anti-Bribery and Corruption Laws (which policies and procedures shall be disclosed to the Purchaser on request) and will enforce them where appropriate; and
- (iv) the Supplier agrees that upon written notice, the Purchaser may audit the books and records of the Supplier concerning its performance of any audit for the purpose of ensuring Supplier compliance with clause 17(a) and 17(b).
- (c) Upon becoming aware of any actual, reasonably suspected or anticipated breach of clauses 17(a) or 17(b), the Supplier must immediately provide written notice of the breach giving full details of such breach to the Purchaser.
- (d) If the Supplier is in breach of clauses 17(a) or 17(b), or the Purchaser reasonably suspects such a breach in its sole discretion, without prejudice to any other remedy which the Purchaser may have, the Purchaser may immediately terminate this Agreement for breach by providing written notice of termination to the Supplier.
- (e) Notwithstanding any other provision of this Agreement, as a consequence of termination under clauses 17(d), the Purchaser shall not be liable for any loss or damage or other costs or expenses of any kind whatsoever that the Supplier may suffer as a result of such termination.
- (f) Any right of termination under clause 17(d) is in addition to any other right of termination the Purchaser may have under this Contract or at Law.

**18. Miscellaneous**

**18.1 Definitions**

In the Contract unless the context clearly indicates otherwise:

**Authority** means all persons and any government, government body, semi-government, local government, authority, administrative or judicial body, public authority, statutory corporation or instrumentality that has jurisdiction over the Goods and Services.

**Best Industry Practice** means exercising the degree of skill, care diligence, efficiency, prudence and foresight which would be expected from a skilled and competent service provider experienced in providing goods and services commensurate to the type, size, value and complexity of the Goods and Services.

**Breach Notice** means a notice issued by Purchaser specifying:

- (a) details of a breach of contract; and
- (b) requiring Supplier to remedy that breach within a reasonable time determined by Purchaser.

Revision 3	Page 4 of 9	Reference: DIV-LD-01-01.02
Issued October 2018		

**Claim** means any claim, action, demand, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether in connection with these Terms and Conditions or any Purchase Order, at Law, in equity, under statute or otherwise.

**Companies Act** means the *Companies Act 1993*.

**Confidential Information** means any information in any form which:

- (a) is, by its nature, confidential or non-public;
- (b) is marked or designated or confirmed by a Party as confidential or proprietary at the time of its disclosure; or
- (c) a Party knows or ought to know is confidential.

but excludes information that is:

- (d) in or enters the public domain through no fault of either Party;
- (e) information that was made available to a Party by a person (other than the other Party) who, as far as that Party knows, has or then had the unrestricted legal right to do so; or
- (f) information that is required to be disclosed by Law, any Authority or the rules of a recognised securities exchange;
- (g) information that is disclosed to the Party's professional advisers to obtain professional advice; or
- (h) disclosure of the information to a Related Body Corporate of the Party, provided that the Related Body Corporate is subject to an obligation of confidence no less onerous than that owed under this Agreement.

**Date for Delivery** means the date for the Delivery of the Goods and Services as specified in the Purchase Order.

**Defective Goods** means Goods which are not in conformity with the Contract.

**Deficient Services** means Services or the results of any Services which are not in conformity with the Contract.

**Delivery** means delivery of the Goods and performance of the Services at the Site.

**Fit for the Intended Purpose** means that the Goods and Services satisfy the purposes, functions and requirements set out in, or which can reasonably be inferred from, the Contract.

**Goods** mean the goods to be supplied by the Supplier under the Contract.

**GST** means any form of goods and services tax payable under the GST Law.

**GST Law** means the *Goods and Services Tax Act 1985*.

**Indemnified Parties** means the Purchaser, each entity comprising the Purchaser Group and their respective Personnel and an **Indemnified Party** means any of the Indemnified Parties.

**Insolvency Event** in relation to an entity, means:

- (a) a receiver, receiver and manager, administrator, trustee or similar official being appointed over any of the assets or undertaking of the entity;

- (b) the entity suspending payment of its debts generally;
- (c) the entity being or becoming unable to pay its debts as they become due in the normal course of business within the meaning of the Companies Act;
- (d) the entity entering into or resolving to enter into any arrangement, understanding or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application or order being made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the entity or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction which has the prior consent of all of the members of the entity; or
- (f) an administrator being appointed in accordance with the Corporations Act; and

and in relation to an individual, means the individual being or becoming insolvent or committing an act of bankruptcy as those terms are used in the *Insolvency Act 2006*.

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, inventions and Confidential Information, and any other results of intellectual activity in any field whether or not registrable, registered or patentable including rights that may exist in applications to register these rights and all renewals and extensions of these rights.

**Law** means:

- (a) all Legislative Requirements;
- (b) any Licences; and
- (c) those principles of common law and equity established by decision of the courts.

**Legislative Requirements** means all present and future Acts of Parliament of New Zealand, regulations, codes, ordinances, local laws, by-laws, rules and requirements of all Authorities.

**Liability** means any debt, obligation, Claim, action, cost (including legal costs on an indemnity basis, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, losses, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

and whether incurred or payable under the Contract otherwise at Law.

**Licence** means all licences, qualifications, registrations and other statutory requirements necessary for the performance of Services pursuant to and in compliance with the Contract.

**Manufacturer's Warranty** means a warranty given by the manufacturer of the Goods in relation to those Goods.

**Motor Vehicle Insurance** means a policy of comprehensive motor vehicle insurance covering third party property damage, or any injury to or death of any person, arising from or in relation

Revision 3	Page 5 of 9	Reference: DIV-LD-01-01.02
Issued October 2018		

to any plant or vehicles (registered or unregistered) in connection with the Contract or the Services.

**Party** means the Purchaser or the Supplier and **Parties** has a corresponding meaning.

**Personnel** means:

- (a) in the case of the Supplier, any of its employees, agents and representatives, any Subcontractors and any of the employees, agents and representatives of any Subcontractors, who are involved either directly or indirectly in the provision of either or both of the Goods and Services; and
- (b) in the case of the Purchaser or any member of the Purchaser Group, any of their respective past or present officers, employees, agents or representatives.

**Policy** means:

- (a) Purchaser's Anti-Bribery & Corruption Policy; and
- (b) any other rules, plans, standards, policies and procedures of the Purchaser as communicated or made available to Supplier from time to time.

**Price** means the amount payable for the Goods and Services specified in the Purchase Order and adjusted in accordance with the Contract.

**Project IP** has the meaning given to that term in clause 15(b).

**Public and Products Liability Insurance** means a policy of insurance, written on an occurrence basis, covering all liability in respect of:

- (a) loss of, damage to, or loss of use of property; and
- (b) the injury (including disease or illness) to, death of or illness of any person,

in connection with the Contract.

**Purchaser** has the meaning given in clause 3.1(b).

**Purchaser Entity** has the meaning given in clause 3.1(b).

**Purchaser Group** has the meaning given in clause 3.1(a).

**Purchaser Material** means any material provided by or on behalf of the Purchaser to the Supplier under or in connection with the Contract or the supply of the Goods and Services.

**Purchase Order** means a document so identified from the Purchaser to the Supplier requiring the provision of Goods and the performance of the Services.

**Quality Standards** means all standards, codes, specifications and requirements to be complied with pursuant to the Contract or by Law.

**Related Company** has the meaning given to that term in the Companies Act.

**Security Interest** means:

- (a) any security that is a security interest for the purposes of the *Personal Property Securities Act 1999*; and
- (b) any mortgage, charge, pledge, hypothecation or lien or any security or preferential interest of any kind, or arrangement with any creditor.

**Services** means the services to be performed by the Supplier specified in the Purchase Order.

**Site** means the site for Delivery of the Goods and Services as specified in the Purchase Order.

**Site Requirements** means the requirements relating to working on or around the Site as the Purchaser provided to the Supplier in writing whether as part of a Purchase Order or otherwise.

**Subcontractor** means any contractor or subcontractor (including consultants and suppliers) engaged by the Supplier and those contractor's or subcontractor's employees, officers, agents, consultants and contractors.

**Supplier** means the Party so identified in the Purchase Order.

**Supplier Material** means any material provided to a member of the Purchaser Group by the Supplier or on the Supplier's behalf in connection with the Contract.

**Tax** means any present and future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature imposed or levied by an Authority, together with any penalties, fines or interest thereon.

**Tax Invoice** means an invoice which complies with the GST Act in relation to the production and form of tax invoices for GST purposes.

**Warranty Period** means in respect of the Goods, either;

- (a) the period commencing on the date on which those Goods are delivered and ending on the expiry of 12 months; or
- (b) the period of any applicable Manufacturer's Warranty, which ever is longer.

**18.2 Interpretation**

In the Contract unless expressly provided otherwise:

- (a) a reference to this Contract or another instrument, Licence, Policy, code or standard, and includes any variation, supplement, assignment, novation, substitution or replacement of any of them;
- (b) the singular includes the plural and vice versa;
- (c) includes or including means includes or including without limitation;
- (d) a reference to a person includes a natural person, firm, partnership, body corporate, unincorporated association, authority, the Crown or any other organisation or legal entity;
- (e) a reference to a natural person includes a reference to the person's executors, administrators, successors, substitutes (including, persons taking by novation) and assigns;
- (f) a reference to a corporation includes its successors and permitted assigns;
- (g) a reference to a body or Authority which ceases to exist is a reference to either a body or Authority that the Parties agree to substitute for the named body or Authority or, failing agreement, to a body or Authority having substantially the same objects as the named body or Authority;

Revision 3	Page 6 of 9	Reference: DIV-LD-01-01.02
Issued October 2018		

- (h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (i) a reference to a time is to that time in the country in which the Goods are Delivered or the Services are performed;
- (j) a requirement to do anything includes a requirement to cause or procure that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (k) a word that is derived from a defined word has a corresponding meaning;
- (l) any reference to a right or a discretion on the part of the Purchaser means that the Purchaser may exercise that right or discretion in its sole and absolute discretion;
- (m) any terms used in this Contract (unless the context otherwise requires) which are defined in the GST Act are taken to have the meaning as defined in the GST Act;
- (n) a reference to \$, NZD or dollar is to the lawful currency of New Zealand;
- (o) a reference to a court is to a New Zealand court;
- (p) headings and the table of contents are inserted for convenience only and do not affect interpretation of the Contract; and
- (q) a reference to 'supplier', 'contractor' or 'service provider' or any similar derivative of such terms in any document comprising this Contract will be taken to mean Supplier.

**18.3 Inconsistency**

Unless expressly provided otherwise, to the extent of any inconsistency between the terms set out in these terms and conditions or a Purchase Order issued pursuant to these terms and conditions, the terms of the Purchase Order shall prevail.

**18.4 Construction**

The Contract is not to be construed against a Party on the basis that the Party or its lawyers were responsible for its drafting.

**18.5 Form of Notice**

Any notice, demand, approval, consent, request or other communication in relation to this Agreement (Notice) will:

- (a) be in writing in English;
- (b) be marked for the attention of Pacific Steel (NZ) Limited or Supplier (as applicable); and
- (c) be given at the recipient's business address or as notified otherwise by being:
  - (i) hand delivered;
  - (ii) sent by email;
  - (iii) sent by prepaid mail within New Zealand; or
  - (iv) sent by prepaid airmail if the sender and the recipient are in different countries.

**18.6 Giving of Notice**

- (a) A Notice is given if:
  - (i) hand delivered, on the date of delivery;

- (ii) sent by email, on the date shown by a printed "read receipt" generated by the sender's computer;
- (iii) sent by prepaid mail within New Zealand, on the third day after posting;
- (iv) sent by airmail, on the seventh day after posting.
- (b) A Notice takes effect from the time it is given unless a later time is specified in it.

**18.7 Purchaser holds for the benefit of each Indemnified Party**

Each Party to the Contract acknowledges and agrees that Purchaser and each Related Company holds each exception, limitation, defence, immunity or other benefit contained in the Contract on behalf of and for the benefit of each Indemnified Party.

**18.8 No reliance**

Without limiting any other provision of the Contract, the Supplier represents and warrants that:

- (a) it has not entered into the Contract in reliance on any representation expressly or impliedly given by or on behalf of the Purchaser; and
- (b) it has made its own inquiries as to the Licenses which apply to the supply of the Goods and the performance of the Services.

**18.9 Relationship of Parties**

- (a) Nothing in the Contract creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties.
- (b) Neither Party has the authority to bind the other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other Party or to pledge the other Party's credit.

**18.10 Governing Law**

- (a) The Contract is governed by the laws of New Zealand.
- (b) Both Parties irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand and courts competent to determine appeals from those courts with respect to any proceedings which may be brought arising out of or in connection with the Contract.

**18.11 Waiver**

A right created by the Contract cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

**18.12 Severance**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from the Contract without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

Revision 3	Page 7 of 9	Reference: DIV-LD-01-01.02
Issued October 2018		

**18.13 Preservation of existing rights**

The expiration or termination of the Contract does not affect any right that has accrued to a Party before the expiration or termination date.

**18.14 No merger**

Any right or obligation of any Party that is expressed to operate or have effect on or after the completion, expiration or termination of the Contract for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

**18.15 Previous versions**

This version of the Standard Terms & Conditions (Purchase) replaces all previous versions of standard terms and conditions for purchase that Purchaser has issued.

Revision 3	Page 8 of 9	Reference: DIV-LD-01-01.02
Issued October 2018		



THIS PAGE IS BLANK.

Revision 3	Page 9 of 9	Reference: DIV-LD-01-01.02
Issued October 2018		